

Before The
FEDERAL COMMUNICATIONS COMMISSION
 Washington D.C. 20554

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In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

Communications Assistance for
 Law Enforcement Act

CC Docket No. 97-213

To: The Commission

COMMENTS OF THE CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION

The Federal Communications Commission ("Commission") seeks comment on the March 27, 1998, Department of Justice ("DOJ") and Federal Bureau of Investigation ("FBI") Joint Motion to Dismiss the Cellular Telecommunications Industry Association ("CTIA") July 16, 1997, Petition for Rulemaking ("CTIA Petition") under the Communications Assistance for Law Enforcement Act ("CALEA").¹

The CTIA Petition sought Commission intervention to resolve a two-year dispute between the telecommunications industry and the FBI in the development of industry standards for the assistance capability requirements of Section 103 of

¹ Public Notice DA-762, released April 20, 1998. The Public Notice also requested separate comment on the extension of the CALEA compliance date and the scope of the assistance capability requirements of Section 103. These issues, of course, are the very same issues raised by the CTIA Petition that DOJ and the FBI now seek to dismiss.

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CALEA. The CTIA Petition also asked the Commission to grant an industry-wide extension of the CALEA compliance date to permit carriers sufficient time to develop technology to implement the industry standard once the Commission defined the capability requirements.

The FBI opposed the CTIA Petition before the Commission, and for its part, the Commission took no action on the CTIA Petition.² Despite the FBI's numerous attempts to block publication of the standard, and over their objection, the industry ultimately decided to adopt an interim standard rather than delay implementation of CALEA any longer.³ Thus, on December 8, 1997, nearly five months after the CTIA Petition was filed, TIA published J-STD-025 as the industry

² The Commission declined to address the CTIA Petition last Fall when it released its Notice of Proposed Rulemaking on CALEA implementation. See In the Matter of Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, Notice of Proposed Rulemaking, FCC 97-356 (released October 10, 1997).

³ The FBI even went so far as to challenge the integrity of TIA as a standards-setting organization in an appeal to the American National Standards Institute. As noted in the CTIA Petition, TIA responded that the FBI had every reason to use such frivolous claims as a means to delay publication of a standard. CTIA Petition at 12, n.6. The FBI ultimately withdrew its appeal and has since stated on the record that it was "unfortunate." See Testimony of H. Michael Warren, Section Chief, FBI CALEA Implementation Section, before the House Judiciary Subcommittee on Crime (October 27, 1997). From CTIA's perspective, the delay in promulgating the standard is not a moot issue -- the Commission should recognize that the FBI bears the responsibility for any delay and should not impose the costs of such delay on the industry.

"safe harbor" standard for implementation of Section 103 of CALEA.

Now, DOJ and the FBI seek to dismiss the CTIA Petition as moot because (1) the telecommunications industry promulgated a standard despite the FBI's attempts to block it and (2) concomitant with the filing of the Motion to Dismiss, the DOJ and FBI filed a petition before the Commission, alleging the industry standard is deficient.⁴

On March 26, 1998, one day prior to the DOJ Petition, the Center for Democracy and Technology filed a Petition for Rulemaking under Sections 107 and 109 of CALEA, arguing that the industry standard was deficient for providing too many capabilities. Then on April 2, 1998, the Telecommunications Industry Association ("TIA") filed a Petition for Rulemaking, asking the Commission to intervene to resolve the dispute, stay CALEA compliance pending a final rule, and grant an extension of two years for carriers and manufacturers to develop CALEA technology.

On April 9, 1998, CTIA, the Personal Communications Industry Association ("PCIA") and the United States Telephone Association ("USTA") filed a response to the petitions ("Joint Industry Response"), urging the Commission to act expeditiously to grant an industry-wide extension and to stay

⁴ See Joint Petition for Expedited Rulemaking by the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI"), filed March 27, 1998 ("DOJ Petition").

implementation of CALEA pending its determination of the capability requirements.⁵

The circumstances referred to in the CTIA Petition have not changed in the past nine months even though the industry standard has now been published. As the DOJ Petition shows, the FBI still seeks the same exotic surveillance capabilities rejected by industry as beyond CALEA during the standards setting process. Most important, the need for an extension is and remains clear on the record before the Commission.⁶

DOJ's Motion to Dismiss fails to acknowledge that the CTIA Petition specifically requested that the Commission grant an extension of the compliance date last year. Specifically, the CTIA Petition stated:

⁵ Joint Response at 12.

⁶ Validating the need for industry-wide extension, the Commission now has before it the following requests for extension of the compliance date: (1) Petition for Extension of Compliance Date by AT&T Wireless Services Inc., Lucent Technologies Inc., and Ericsson Inc., filed March 30, 1998; (2) Petition for an Extension of Time to Comply with the Capability Requirements of Section 103 of CALEA by Powertel, Inc., filed April 23, 1998; (3) Petition for an Extension of CALEA's Assistance Capability Compliance Date by PrimeCo Personal Communications, L.P., filed April 21, 1998; (4) Petition for Extension of time by Ameritech, filed April 24, 1998; (5) Petition for Extension of Compliance Date by USTA, filed April 24, 1998; (6) AirTouch Paging Services, Inc., Petition for an Extension of the CALEA Capability Compliance Date, filed May 4, 1998; (7) AirTouch Communications, Inc., and Motorola, Inc., Joint Petition for an Extension of the CALEA Assistance Capability Compliance Date, filed May 5, 1998.

The industry stands ready to implement the attached industry consensus document within two years of the Commission establishing the standard. However, given the current circumstances, it is virtually impossible for telecommunications carriers or manufacturers to implement the capability assistance requirements of Section 103 by October 25, 1998, the effective date of CALEA.⁷

Notwithstanding DOJ's attempt to ignore the extension component of the CTIA Petition, the Commission, in its *Public Notice*, expressly requested comments on the need for an extension and the issue now is presented squarely in the above-referenced docket.

In view of the above, CTIA agrees that the CTIA Petition is moot both because the industry standard supersedes the request for the Commission to establish a standard by rule,

⁷ CTIA Petition at 17.

and because CTIA's extension request is being addressed in this proceeding. Thus, CTIA is satisfied that there will be no prejudice from dismissal of its petition.⁸

Respectfully submitted,



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⁸ 47 C.F.R. 1.401(e) ("Petitions which are moot . . . may be denied or dismissed without prejudice to the petitioner.")